

37 Am. Jur. 2d Fraud and Deceit § 12

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Fraud and Deceit

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I. Overview

B. Nature and Effect

§ 12. Generally; nature

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Fraud](#)  1

Trial Strategy

[Real-Estate Purchaser's Recovery of Damages in Tort for Fraudulent Misrepresentation of Quantity of Land Sold, 61 Am. Jur. Proof of Facts 3d 411](#)

[Liability of Seller in Residential Real Estate Transaction for Misrepresentation Under "As Is" Contract, 59 Am. Jur. Proof of Facts 3d 463](#)

Fraud actions are personal injury actions.¹ Fraud is an independent, willful tort,² and fraud in the inducement is an action in tort.³

Observation:

Fraud in the inducement and deceit are independent torts for which compensatory and punitive damages may be recovered.⁴

Although claims of fraudulent misrepresentation rest in equity,⁵ fraudulent misrepresentation is recognized as an actionable tort.⁶ There are three types of fraudulent misrepresentation, all requiring minimum allegations of misrepresentation, namely,

reckless misrepresentation, negligent misrepresentation, and deceit.⁷ Thus, negligent misrepresentation, like fraudulent misrepresentation, is a tort.⁸ Fraud, conspiracy, and conversion are separate torts.⁹

Observation:

Although actual fraud is a tort,¹⁰ breach of fiduciary duty, which may be a component of constructive fraud, is not.¹¹

Fraud can be an affirmative defense and may be an affirmative cause of action.¹²

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Footnotes

- ¹ Ex parte Combined Ins. Co., 678 So. 2d 1055 (Ala. 1996).
- ² Okland Oil Co. v. Conoco Inc., 144 F.3d 1308, 49 Fed. R. Evid. Serv. 644 (10th Cir. 1998) (applying Oklahoma law); LaSalle Nat. Trust, N.A. v. Board of Directors of the 1100 Lake Shore Drive Condominium, 287 Ill. App. 3d 449, 222 Ill. Dec. 579, 677 N.E.2d 1378 (1st Dist. 1997).
- ³ Dixon v. SouthTrust Bank of Dothan, N.A., 574 So. 2d 706 (Ala. 1990); Burton v. Linotype Co., 556 So. 2d 1126 (Fla. 3d DCA 1989).
As to the definition of “fraud” in the inducement, see § 2.
- ⁴ Burton v. Linotype Co., 556 So. 2d 1126 (Fla. 3d DCA 1989).
As to damages recoverable for fraud or deceit, see §§ 370 to 374.
- ⁵ Friehe v. Schaad, 249 Neb. 825, 545 N.W.2d 740 (1996).
- ⁶ Tagliente v. Himmer, 949 F.2d 1 (1st Cir. 1991) (applying Massachusetts law); MCS-1 Ltd. Partnership v. Progressive Bank & Trust Co., 637 So. 2d 782 (La. Ct. App. 1st Cir. 1994), writ denied, 642 So. 2d 878 (La. 1994); Kubik v. Letteri, 532 Pa. 10, 614 A.2d 1110 (1992).
- ⁷ Williams v. Tweed, 520 N.W.2d 515 (Minn. Ct. App. 1994).
As to the elements of an action for misrepresentation, see §§ 26 to 29.
- ⁸ MCS-1 Ltd. Partnership v. Progressive Bank & Trust Co., 637 So. 2d 782 (La. Ct. App. 1st Cir. 1994), writ denied, 642 So. 2d 878 (La. 1994).
- ⁹ Bosworth v. Gulf Coast Dodge, Inc., 879 S.W.2d 152 (Tex. App. Houston 14th Dist. 1994).
- ¹⁰ LaSalle Nat. Trust, N.A. v. Board of Directors of the 1100 Lake Shore Drive Condominium, 287 Ill. App. 3d 449, 222 Ill. Dec. 579, 677 N.E.2d 1378 (1st Dist. 1997).
- ¹¹ LaSalle Nat. Trust, N.A. v. Board of Directors of the 1100 Lake Shore Drive Condominium, 287 Ill. App. 3d 449, 222 Ill. Dec. 579, 677 N.E.2d 1378 (1st Dist. 1997).
As to breach of fiduciary duty and constructive fraud, see § 34.
- ¹² Kuehnhofer v. Welch, 893 S.W.2d 689 (Tex. App. Texarkana 1995), writ denied, (Jan. 11, 1996).

Works.